

Address by the Deputy Minister of Justice and Constitutional Development, The Hon JH Jeffery, MP, at the Sheriffs Induction Programme, held at the Premier Protea Hotel, 573 Church Street, Arcadia, Pretoria, at 09h00, on 19 August 2013

Mt Thaka Seboka, Programme Director and member of the South African Board for Sheriffs;
Other members of the South African Board for Sheriffs present;
Mr Hoosein Kagee, Executive Manager of the South African Board for Sheriffs;
Mr Nic Swart of the Law Society of South Africa;
Ms Emily Dlamini, the Regional Head of the Department of Justice and Constitutional Development in Gauteng;
Newly appointed sheriffs;
Representatives of the Justice Family;
Ladies and Gentlemen

My appreciation to the South African Board for Sheriffs for inviting me to participate in the induction programme for the newly appointed sheriffs. I bring with me the best wishes of Minister Jeff Radebe, MP.

On the 4th of July this year Minister Radebe appointed 71 persons as sheriffs to various offices around the country, with effect from 1 October 2013. May I take this opportunity of congratulating all of you here today, as well as the newly appointed sheriff nationwide on your appointments and I welcome you to the Justice family. All of you, as sheriffs, form an indispensable part of the justice system of our country, a justice system which seeks to assist all South Africans, black and white, rich and poor, urban and rural, in accessing and enforcing their constitutionally guaranteed rights. The induction programme will be for a period of two weeks followed by an in house week long training programme at the offices of experienced sheriffs from 9 September 2013. I would like to extend my sincere appreciation to the sheriffs who will set time aside to provide guidance and mentorship to the newly appointed sheriffs.

The sheriffs' profession has undergone profound change since the birth of our democracy in 1994. Before 1994, sheriffs had the power to arrest and imprison people, often the poorest of the poor, for their inability to settle civil debt, often for very small amounts. To say that sheriffs were not exactly the most popular officers of the court may be an understatement. It was an overwhelmingly white male profession with, what my predecessor, Andries Nel, once referred to as a "skiet, skop en donner" and my I add, "arrest" reputation.

Much has changed since 1994. Great strides have been made in making the sheriffs' profession more accessible and user-friendly. The sheriff, as an officer of the justice, plays a pivotal role in the justice system; a justice system which has to be accessible to all our people, in particular the poor and marginalised who, given our country's history of injustice, have been deprived of justice for so long.

Access to justice is a fundamental right that unlocks access to all the other rights enshrined in our Constitution. As President Jacob Zuma has rightly said: "Access to justice is the cornerstone of orderly co-existence of citizens of any country. Access to justice is not necessarily the ability to walk to and reach the building where justice is administered. It only becomes complete when one's dispute is settled speedily, in an unbiased manner and when one feels he or she has had access to qualitative justice."

President Zuma went on to say that, "Our concern is the failure to have cases or disputes

processed and resolved speedily. Justice delayed is justice denied: so goes the proverb. Part of the transformation of the system is to ensure speedy access to justice. Poverty is still one of the major barriers for our people in enjoying or exercising their right of access to justice. The courts therefore remain a very hostile and traumatic experience for many of our people and this discourages many from using these forums to advance their rights or settle disputes. This is not healthy in a democratic society."

The President is correct when he says that many, probably the overwhelming majority of our people, find the legal process hostile and traumatic. We should strive to make the process easier and less daunting. Very often the first person that a defendant or judgment creditor will encounter at the start of a legal dispute is the sheriff. The sheriff is an important interface between the public and the justice system. The sheriff or deputy sheriff should, in the execution of his or her duties not only serve court process simply like a messenger, but should also inform the judgment debtor, who is often amongst the poorest of the poor and illiterate, of the duties and responsibilities of a sheriff and explain the contents of the summons, judgement or execution order and the rights of the judgment debtor in this regard. This becomes even more important as the summons or order of the court is most often not issued in the language of the defendant or judgment debtor. If a person understands the process, the process becomes less hostile and traumatic for them.

The conduct of the sheriff or deputy sheriff plays a big part in how people perceive the law and the legal system. If people view the law and the justice system as hostile, negative and ineffective, there will be no respect for the rule of law. All of our people must be able to have confidence in the justice system and have the belief that the system will protect their rights and that they will be treated fairly and equally. As an aside, an interesting study was recently done in the United States. In their book "*Justice in America: the Separate Realities of Blacks and Whites*" authors Jon Hurwitz and Mark Peffley write: "We found remarkable differences in how whites and blacks perceive the justice system. Usually, when we speak about group differences—the "gender gap," for example—the differences are in the range of 10 to 20 percent. But these differences pale in comparison to the gulf separating black and white perceptions of justice. Blacks are extraordinarily sceptical that the system can be fair, while whites see the system as essentially colour blind."

The duties and responsibilities of a sheriff or deputy sheriff are not always easy. In the matter of *Firstrand Bank Limited t/a FNB Home Loans and Others, Ex Parte* the sheriff of Brakpan, the sheriff of Sandton and Firstrand Bank approached the High Court to ask for a declaratory order on clarity on the provisions of Rule of Court 46(3). Rule 46(3) deals with the mode of attachment of immovable property by the sheriff. The Rule states that the sheriff has to give notice in writing to the owner of the property. The notice has to be served by registered letter "duly prepaid and posted, addressed to the person intended to be served." Now all of us here may think that that all sounds rather straightforward and simple enough. However, the problem was that the courts had conflicting decisions on the interpretation of the Rule. In *Sowden v ABSA Bank* Heher J had a certain view, but in *Standard Bank South Africa Limited v Bundu Te Litho* Foxcroft J disagreed with Heher J. To add to that, Goldstein J in *Stand 734 Fairland CC v BOE Bank Limited* also disagreed with Heher J. And in the middle of all these conflicting judgments were the poor sheriff of Brakpan and the sheriff of Sandton. Luckily the issue of Rule 46 is now being taken up by the SABFS and the Rules Board. But the moral of the story is that being a sheriff is not always easy and there will be times when you will be faced with very difficult situations. That is another reason why on-going training and programmes such as this one, are vitally important for the sheriffs' profession.

Also of fundamental importance to the work of a sheriff is the Code of Conduct. The Code seeks to explain how a sheriff should perform his or her duties, for example, a sheriff may serve or execute process only within the area of jurisdiction or the portion of an area of jurisdiction for which he or she has been appointed. A sheriff entrusted with the service or execution of a process must act without avoidable delay in accordance with the Rules of Court and provided that any process, requiring urgent attention shall be dealt with immediately. A very important provision, namely that trust money must be paid out to the person entitled thereto without avoidable delay. A sheriff may not perform any act as sheriff in any matter in which he or she has a direct or indirect interest. A Sheriff must at all times act in an impartial, unbiased and fair manner towards all parties and must ensure that deputy sheriffs in his or her employ do the same. A sheriff must serve members of the public in the official language in which he or she is addressed or otherwise communicated with. Furthermore, a sheriff may not act in any way that will bring the good name and esteem of the office of sheriff in particular and the administration of justice in general into disrepute or cause it to appear in a bad light.

There are new developments in the area of standards for sheriffs in the performance of their duties, as the SABFS has recently completed a new draft Code of Conduct for Sheriffs. The new Code must be submitted to Minister for approval before it can be implemented. The SABFS is also, in consultation with the sheriffs' profession and the DOJCD, in the process of drafting guidelines for the appointment of deputy sheriffs.

With regards to transformation of the profession, it is a constitutional imperative that the sheriffs, like all sectors of state and society, must reflect the demographics of South African society in respect of its racial and gender composition. The task of advancing the transformation of the profession requires that progressive programmes be designed to improve its racial and gender profile. Before 1994, 95, 27% of the sheriffs were men and 89, 03% were white.

In 2009 the Department conducted a nationwide audit of the sheriffs' profession which entailed the collation and analysis of information pertaining to sheriffs, including the racial and gender composition. The audit also revealed that most sheriffs who are White were appointed in the most lucrative offices which were situated in the metropolitan areas and affluent cities and suburbs, while the majority of sheriffs who are Black were appointed in former Homelands and traditionally Black townships and rural villages which generated a low income.

During August 2012 and July 2013, after the moratorium on the appointment of sheriffs was lifted, the Minister appointed 195 persons to vacant posts of sheriffs.

These newly appointed sheriffs bring the total number of permanent sheriffs currently operating in the country to 365. Of these 365 sheriffs, 175 are White (48%), 139 African (38%), 27 Indian (7%) and 24 Coloured (7%). Women now represent 22 22% of the total sheriffs and men 78%. . Although there has been an increase from 4.7% to 22% in the appointment of women much more needs to be done to attract women to a profession that has in the past been viewed as the exclusive domain of men. It is encouraging to note that of the appointments made during 2012 and 2013 is that Black persons and women were appointed to the larger and most economically viable areas. Whilst there is still a long way to go, particularly in certain provinces where the levels of representivity are not yet an adequate reflection of our society, these appointments have gone a substantial way to making the profession more representative, in line with the transformative vision and goals of our Constitution.

In 2009 Acting Justice Sardiwalla headed a task team to investigate the re-designation of courts and magisterial districts and make recommendations on establishing sheriff offices in these areas.

Following the implementation of the recommendations of the task team and subsequent representations received from sheriffs and other role players, a project manager, Mr E Petersen, has now been appointed to investigate approximately 22 identified sheriff offices where there have been challenges in respect of the re-designation of courts and magisterial districts. It is anticipated that the new project manager will conclude his investigation by January 2014; where after a comprehensive report will be submitted to Ministry advising of the outcome of the investigation. To further this process, I have undertaken to visit the rural sheriff offices (especially those that are not economically viable) to get a better understanding of challenges facing the sheriffs' profession.

As I have mentioned earlier, although the Minister announced your appointment as sheriffs on 4 July 2013, it only takes effect from 1 October 2013. This is not without reason as it is of critical importance that you, as the newly appointed sheriffs, during this period meet with the outgoing sheriffs, the court manager, the magistrate, the attorneys and all other stakeholders to ensure a smooth hand over and transition.

In terms of Regulation 10 of the Regulations relating to Sheriffs, when a sheriff vacates his or her office all process and other documents which were in his or her possession, including such records as may be necessary to pay claims against him or her account, shall be taken into possession by the Director-General and be delivered to the sheriff's successor, who shall be responsible for the payment of claims from the moneys in the account. Sheriffs are required to retain every record or other document for a period of at least three years after the date to which it relates. The Director-General has issued an instruction (Departmental Circular 86 of 2012) to all court managers of the court where a vacancy of a sheriff occurs, to request the sheriff who is vacating the office to complete within three days an inventory in respect of all court processes, files, movable and immovable property attached by the sheriff who is vacating office and proof of moneys deposited in the trust account in respect of the office. Should it not be possible to complete the inventory within three days permission should be obtained from the Regional Head of the DOJCD or a person designated by him or her for an extension. The DOJCD, in consultation with the SABFS, also developed a checklist to assist in the handing over procedure and it is trusted that these initiatives will go a long way in ensuring a smooth transition .

You as sheriffs will appoint deputy sheriff to assist you in fulfilling your duties and responsibilities and such appointments may, in terms of section 6 of the Sheriffs Act of 1986 only take place with the approval of the SABFS. Deputy Sheriffs are the 'face' of the Sheriffs profession as they are the ones that will in most cases go out and serve and execute documents and attach property and interface with the public. The Sheriffs Amendment Act of 2012 now makes it obligatory for the SABFS to develop guidelines for the appointment of deputy sheriffs. It is the intention of the DOJCD to recommend to the President to put this amendment into operation toward the end of September 2013.

In conclusion, the Bill of Rights enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. In terms of sections 9 and 10 of the Bill of Rights of the Constitution of the Republic of South Africa of 1996, everyone is equal before the law and has the right to equal protection and benefit of the law and everyone has inherent dignity and the right to their dignity respected and protected. It is my wish that as you enter the sheriffs profession that you will carry the above values, as enshrined in the Bill of Rights, not in

your pockets but in your hearts and make it real as those that you interact with in the execution of your duties will very often be the poorest of the poor and the vulnerable.

I thank you for your attention and I wish you all the best for the rest of the training programme.